

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE MARCH 15, 2004

SENATE BILL

No. 1225

Introduced by Senator Morrow

February 11, 2004

An act to amend Section 259 of the Code of Civil Procedure, and to amend *Section 71601* of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1225, as amended, Morrow. Court officers.

(1) The California Constitution authorizes a court to order a cause to be tried by a temporary judge who is a member of the State Bar, on stipulation of the parties litigant. Existing statutory law sets forth the duties of court commissioners.

This bill would revise a related provision of statutory law to conform to the constitutional provision described above. The bill would also revise the duties of a court commissioner.

(2) Existing law defines the term "subordinate judicial officer" for purposes of court administration and specifies that the term includes certain commissioners, referees, and judges pro tempore.

This bill would revise those specified examples of subordinate judicial officers, and make related nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 259 of the Code of Civil Procedure is
2 amended to read:

3 259. Subject to the supervision of the court, every court
4 commissioner shall have power to do all of the following:

5 (a) Hear and determine ex parte motions for orders and
6 alternative writs and writs of habeas corpus in the superior court
7 for which the court commissioner is appointed.

8 (b) Take proof and make and report findings thereon as to any
9 matter of fact upon which information is required by the court.

10 Any party to any contested proceeding may except to the report
11 and the subsequent order of the court made thereon within five
12 days after written notice of the court’s action. A copy of the
13 exceptions shall be filed and served upon opposing party or
14 counsel within the five days. The party may argue any exceptions
15 before the court on giving notice of motion for that purpose within
16 10 days from entry thereof. After a hearing before the court on the
17 exceptions, the court may sustain, or set aside, or modify its order.

18 (c) Take and approve any bonds and undertakings in actions or
19 proceedings, and determine objections to the bonds and
20 undertakings.

21 (d) Act as temporary judge when otherwise qualified so to act
22 and when appointed for that purpose, on stipulation of the parties
23 litigant. While acting as temporary judge the commissioner shall
24 receive no compensation therefor other than compensation as
25 commissioner.

26 (e) Hear and report findings and conclusions to the court for
27 approval, rejection, or change, all preliminary matters including
28 motions or petitions for the custody and support of children, the
29 allowance of temporary spousal support, costs and attorneys’ fees,
30 and issues of fact in contempt proceedings in proceedings for
31 support, dissolution of marriage, nullity of marriage, or legal
32 separation.

33 (f) Hear actions to establish paternity and to establish or
34 enforce child and spousal support pursuant to subdivision (a) of
35 Section 4251 of the Family Code.

36 (g) Hear, report on, and determine all uncontested actions and
37 proceedings subject to the requirements of subdivision (d).



1 SEC. 2. Section 71601 of the Government Code is amended
2 to read:

3 71601. For purposes of this chapter, the following definitions
4 shall apply:

5 (a) “Appointment” means the offer to and acceptance by a
6 person of a position in the trial court in accordance with this
7 chapter and the trial court’s personnel policies, procedures, and
8 plans.

9 (b) “Employee organization” means any organization that
10 includes trial court employees and has as one of its primary
11 purposes representing those employees in their relations with the
12 trial court.

13 (c) “Hiring” means appointment as defined in subdivision (a).

14 (d) “Mediation” means effort by an impartial third party to
15 assist in reconciling a dispute regarding wages, hours, and other
16 terms and conditions of employment between representatives of
17 the trial court and the recognized employee organization or
18 recognized employee organizations through interpretation,
19 suggestion, and advice.

20 (e) “Meet and confer in good faith” means that a trial court or
21 representatives as it may designate, and representatives of
22 recognized employee organizations, shall have the mutual
23 obligation personally to meet and confer promptly upon request by
24 either party and continue for a reasonable period of time in order
25 to exchange freely information, opinions, and proposals, and to
26 endeavor to reach agreement on matters within the scope of
27 representation. The process should include adequate time for the
28 resolution of impasses where specific procedures for resolution
29 are contained in this chapter or in a local rule, or when the
30 procedures are utilized by mutual consent.

31 (f) “Personnel rules,” “personnel policies, procedures, and
32 plans,” and “rules and regulations” mean policies, procedures,
33 plans, rules, or regulations adopted by a trial court or its designee
34 pertaining to conditions of employment of trial court employees,
35 subject to meet and confer in good faith.

36 (g) “Promotion” means promotion within the trial court as
37 defined in the trial court’s personnel policies, procedures, and
38 plans, subject to meet and confer in good faith.

39 (h) “Recognized employee organization” means an employee
40 organization that has been formally acknowledged to represent

1 trial court employees by the county under Sections 3500 to 3510,
2 inclusive, prior to the implementation date of this chapter, or by the
3 trial court under Rules 2201 to 2210, inclusive, of the California
4 Rules of Court, as those rules read on April 23, 1997, Sections
5 70210 to 70219, inclusive, or Article 3 (commencing with Section
6 71630) of this chapter.

7 (i) “Subordinate judicial officer” means an officer appointed
8 to perform subordinate judicial duties as authorized by Section 22
9 of Article VI of the California Constitution, including, but not
10 limited to, a court commissioner, probate commissioner, child
11 support commissioner, referee, traffic trial commissioner, traffic
12 referee, juvenile court referee, juvenile hearing officer, and
13 temporary judge.

14 (j) “Transfer” means transfer within the trial court as defined
15 in the trial court’s personnel policies, procedures, and plans,
16 subject to meet and confer in good faith.

17 (k) “Trial court” means a superior court.

18 (l) “Trial court employee” means a person who is both of the
19 following:

20 (1) Paid from the trial court’s budget, regardless of the funding
21 source. For the purpose of this paragraph, “trial court’s budget”
22 means funds from which the presiding judge of a trial court, or his
23 or her designee, has authority to control, authorize, and direct
24 expenditures, including, but not limited to, local revenues, all
25 grant funds, and trial court operations funds.

26 (2) Subject to the trial court’s right to control the manner and
27 means of his or her work because of the trial court’s authority to
28 hire, supervise, discipline, and terminate employment. For
29 purposes of this paragraph only, the “trial court” includes the
30 judges of a trial court or their appointees who are vested with or
31 delegated the authority to hire, supervise, discipline, and
32 terminate.

33 (m) A person is a “trial court employee” if and only if both
34 paragraphs (1) and (2) of subdivision (l) are true irrespective of job
35 classification or whether the functions performed by that person
36 are identified in Rule 810 of the California Rules of Court. The
37 phrase “trial court employee” includes those subordinate judicial
38 officers who satisfy paragraphs (1) and (2) of subdivision (l). The
39 phrase “trial court employee” does not include temporary
40 employees hired through agencies, jurors, individuals hired by the



1 trial court pursuant to an independent contractor agreement,
2 individuals for whom the county or trial court reports income to
3 the Internal Revenue Service on a Form 1099 and does not
4 withhold employment taxes, sheriffs, and judges whether elected
5 or appointed. Any temporary employee, whether hired through an
6 agency or not, shall not be employed in the trial court for a period
7 exceeding 180 calendar days, except that for court reporters in a
8 county of the first class, a trial court and a recognized employee
9 organization may provide otherwise by mutual agreement in a
10 memorandum of understanding or other agreement.

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